

STATE OF MICHIGAN
COURT OF APPEALS

In re CALABRESE/BROWNELL, Minors.

UNPUBLISHED
November 20, 2014

No. 321263
Barry Circuit Court
Family Division
LC No. 12-008534-NA

Before: BOONSTRA, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-mother's parental rights to her three minor children based on MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist) and (g) (failure to provide proper care and custody). Because the petitioner presented clear and convincing evidence in support of these statutory grounds for termination, we affirm.

I. BACKGROUND

The Department of Human Services (DHS) took respondent's three children into care after a series of drug and neglect-related Child Protective Services (CPS) reports and interventions. In December 2012, respondent tested positive for methamphetamine and the hair of her six-month-old son, OB, tested positive as well. The children were briefly placed with respondent's mother and stepfather, but then were transferred to a foster home together. Respondent pleaded to jurisdiction based on her substance abuse history and the December 2012 drug tests.

During the 15-month child protective proceeding, respondent initially complied with her case service plan. She submitted to a psychological evaluation, after which intensive weekly counseling was recommended. Respondent's counselor addressed her substance addiction, as well as coping and decision-making skills. Respondent also worked with a parent aide who supervised visitation and provided one-on-one advising sessions to improve respondent's parenting skills. Respondent soon decreased the frequency of her counseling sessions and then stopped attending. Respondent had earned unsupervised overnight visitation with the children. That privilege was revoked when she tested positive for methamphetamine in June 2013. Respondent also ended her one-on-one parenting advice sessions and became hostile toward her parent aide. In September 2013, respondent again tested positive for methamphetamine.

In November 2013, respondent reentered counseling. However, she missed two drug screens that were deemed positive. Then, on December 3, 2013, respondent tested positive for

marijuana. At that point, petitioner filed a supplemental petition seeking termination of respondent's parental rights. Petitioner cited respondent's failure to rectify the condition that led to adjudication: her drug abuse. Petitioner also cited respondent's inability to provide proper care and custody for her children based on her transient lifestyle, series of unhealthy romantic relationships, and lack of progress in improving her parenting skills.

Following a two-day termination hearing, the circuit court terminated respondent's parental rights. The court emphasized that respondent's continued drug abuse was the primary basis for the termination decision. The court relied upon the additional factors raised in the supplemental petition as well. This appeal followed.

II. ANALYSIS

On appeal, respondent challenges the grounds supporting termination, but not the court's conclusion that termination was in the children's best interests. In relation to MCL 712A.19b(3)(c)(i), respondent contends that the DHS provided inadequate services to address her substance abuse issues, precluding reliance on this factor in terminating her parental rights. In relation to factor (g), respondent contends that the circuit court was required to consider only admissible evidence in support of this new circumstance, but relied upon inadmissible evidence at the termination hearing.

Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

We review for an abuse of discretion a circuit court's decision to admit evidence. *In re Archer*, 277 Mich App 71, 77; 744 NW2d 1 (2007). A circuit court abuses its discretion when its evidentiary ruling falls outside the range of reasonable and principled outcomes. *In re Utrera*, 281 Mich App 1, 15; 761 NW2d 253 (2008). We review de novo underlying issues regarding the interpretation and application of the court rules. *Id.* at 9. We review for plain error a respondent's unpreserved challenges. *Id.* at 8-9.

A. EVIDENTIARY STANDARD

The circuit court erred in making a blanket statement that the rules of evidence do not apply at termination hearings. While the rules of evidence generally do not apply at termination hearings, MCR 3.977(H)(2), the termination decision must be based on "clear and convincing legally admissible evidence" where the court's decision is based upon "one or more

circumstances new or different from the offense that led the court to take jurisdiction.” MCR 3.977(F)(1)(b); *Rood*, 483 Mich at 101-102 (CORRIGAN, J.).

The court’s error was harmless and does not merit relief. Contrary to respondent’s assertion, it is clear that the primary ground for termination was respondent’s continued drug use. As stated by the circuit court, “the primary reason is the substance abuse issue is [sic] not been adequately addressed.” This was not a new ground as acknowledged by respondent. The court also relied on new or different circumstances in terminating respondent’s parental rights. Respondent did not admit any grounds related to her ability to provide proper care and custody of her children at the adjudicatory phase. Therefore, the petitioner was required to support termination under factor (g) with admissible evidence. As noted within, the petitioner presented clear and convincing admissible evidence in that regard.

B. MCL 712A.19b(3)(c)(i)

MCL 712A.19b(3)(c) provides for termination under the following circumstances:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

In support of this factor, the petitioner presented evidence that respondent was still abusing methamphetamine and marijuana after more than a year of services. Respondent tested positive for methamphetamine on June 28 and September 10, 2013, missed two drug screens in the fall of 2013, and tested positive for marijuana on December 3, 2013. Respondent did not take responsibility for her actions, denying drug use and blaming her positives on allergy medications, energy drinks, and second-hand exposure. Respondent also failed to consistently attend counseling to address her substance abuse. Because of her counseling truancy, respondent did not fully and adequately address the Vanderbeck Criteria geared toward preventing her relapse into drug abuse. Respondent went three months without attending counseling sessions in the summer and fall of 2013. And even at the end of December 2013, the counselor reported that respondent had completed only the first two steps of the Vanderbeck “relapse prevention plan.”

Respondent challenges the reliance on her counseling performance in considering this factor. Although she never sought more specific substance abuse treatment during the proceedings, respondent now complains that the DHS provided inadequate services. See *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012), quoting *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000) (“ ‘The time for asserting the need for accommodation in services is when the court adopts a service plan[.]’ ”).

Absent a limited number of exceptions, the DHS must make “[r]easonable efforts to reunify the child and family . . . in all cases.” MCL 712A.19a(2). The reasonableness of the efforts provided effects the sufficiency of the evidence supporting the termination decision. *In re*

Fried, 266 Mich App 535, 541; 702 NW2d 192 (2005). Reasonable efforts are made through the case service plan. *In re Mason*, 486 Mich 142, 156; 782 NW2d 747 (2010).

The statutes do not define the “reasonable efforts” necessary “to reunify the child and family.” We know from our Supreme Court’s differentiation of “reasonable” from “active” efforts under the Indian Child Welfare Act that “reasonable efforts” include a DHS worker “making a referral for services and attempt[ing] to engage the family in services.” *In re JL*, 483 Mich 300, 322 n 15; 770 NW2d 853 (2009). This Court set an example of reasonable efforts not being made in *In re Newman*, 189 Mich App 61, 65-67; 472 NW2d 38 (1991). In that case, an aide was assigned to assist the mentally challenged mother in learning how to maintain a clean home. The DHS knew when the aide was assigned that the mother required repetitive hands-on instruction. The aide purchased cleaning supplies for the mother but “stopped going into the house because it was so dirty.” *Id.* at 66. As noted by this Court, “How then can we say there is no reasonable likelihood that the conditions in the home would not be rectified within a reasonable time when the one person who could have helped respondents remedy the conditions refused to do so?” *Id.*

Here, contrary to respondent’s challenge, the DHS did provide services to assist respondent with her substance addiction. The DHS ordered counseling sessions for respondent. As part of that counseling, the therapist discussed substance abuse issues with respondent. This was evidenced by the counseling reports that were admitted into evidence at the termination hearing. Although the DHS approved 12 sessions, the caseworker testified that “an additional referral would have been made to cover more sessions” if requested or recommended. Moreover, the record evidence reveals that respondent received more than the 12 initially-approved sessions. “While the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered.” *Frey*, 297 Mich App at 248. The evidence established that respondent did not benefit because she did not commit to attendance.

Overall, the evidence revealed that respondent continued to use substances six months, nine months, and one year into the child protective proceedings. Her relapse in the summer and fall of 2013, set her back for three months in counseling. Even after admitting her responsibility in counseling, she returned to a defensive mode at the termination hearing, denying her continued drug use. This amounted to clear and convincing evidence that respondent had not rectified the conditions that led to adjudication and would be unable to do so in a reasonable time considering the ages of the children.

B. MCL 712A.19b(3)(g)

As petitioner supported termination under factor (c)(i), it was not required to prove any additional grounds. However, petitioner did present clear and convincing admissible evidence to support termination under factor (g), which provides: “The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

The petitioner presented the testimony of two CPS investigators and a DHS caseworker describing respondent's frequent moves and inappropriate housing situations both before and during the child protective proceedings. Respondent supplemented the record evidence regarding her various moves through her own testimony. Respondent further testified that her mother had repeatedly evicted her and her children from her home, but planned to return to live with her mother in the event she regained custody of her children. The caseworker testified that respondent's children would not be returned to her care if that plan remained in place.

Respondent's troubled romantic history was also established by admissible evidence. Through respondent's own testimony and the first-hand observations of the witnesses, the petitioner established that respondent enters romantic relationships quickly without determining whether her partners are safe for her children. Even after these proceedings were initiated, respondent leaped into a cohabitating relationship with a man who proposed within three months. As a result of her impulsive decisions, respondent has been the victim of domestic violence, discovered that a partner was a registered sex offender, and exposed her children to drug use and physical abuse.

Most importantly, the petitioner established through the first-hand observations of respondent's parent aide that respondent had not improved her parenting skills during these proceedings. The parent aide testified that she supervised respondent's biweekly, two-hour parenting time blocks and provided one-on-one advice regarding parenting strategies. Respondent did not benefit from this service, however, and instead became hostile and resentful of the assistance. By the time of the termination hearing, respondent still could not divide her attention between the three children, did not follow through on instructions with the children, and failed to appropriately comfort the young children when they became upset. Respondent also frequently brought other adults to her parenting time sessions and focused her attention away from the children. Overall, the parent aide reported, "I've seen very little progress. She has her moments when the visits are good, but they are just moments"

The evidence supported that respondent had not provided proper care and custody of her children and was still unable to do so by the time of the termination hearing. Given her lack of progress, the court could determine that respondent would be unable to provide proper care and custody within a reasonable time. Accordingly, we discern no error in the circuit court's termination determination.

We affirm.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher